IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

CMA.No. 189 of 2002()

AGAINST THE ORDER DATED 09/07/2002 IN IA.1101/2000 IN OS.353/1995 of SUB COURT, MANJERI
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APPELLANT: PETITIONER

PENGAT PALENGAL SANKARANKUTTY NAIR,
S/O. KUMMINI AMMA, WANDOOR AMSOM DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: RESPONDENTS
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1. NADUTHODI PENGAT PALAKKAL VILASINI,
D/O. DEVAKI AMMA, KARUVAMBRAM ASMOM,
MELAKKAM DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

2. SANTHOSH S/O. VILASINI, DO. DO.

3. SURESH S/O. VILASINI, DO.

4. SATHEESH S/O. VILASINI, DO.

5. SUNITHA, D/O. VILASINI, DO.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 5644 OF 2002 IN

C.M.A. NO. 189 OF 2002

CLOSED.

9.4.2007 **ID/- K. PADMANABHAN NAIR, JUDGE.**

K. PADMANABHAN NAIR, J.

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C.M.A. NO. 189 OF 2002

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Dated this the 13th day of April, 2007

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order passed in I.A.No. 1101 of 2000 in O.S. No.353 of 1995 on the file of the Sub Court, Manjeri.

2. Plaintiffs filed the suit for partition. There are 15 defendants. The 1st defendant is the mother of the 4th defendant. First defendant died during the pendency of the suit. The 4th defendant raised a contention that he alone is entitled to succeed the entire estate of the deceased 1st defendant on the ground that first defendant had executed a Will bequeathing the properties in his favour. The 4th defendant filed a petition, I.A. No.292 of 1997, to record him as the legal representative of the deceased 1st defendant. The court below allowed that petition. Subsequently the respondents filed I.A. No.1101 of 2000, to review that order. The court below allowed the said I.A. and recorded the 4th defendant also as one of the legal

representatives of deceased 1st defendant. Challenging that order, this Civil Miscellaneous Appeal is filed.

3. Learned counsel for the appellant submitted that along with the written statement, the appellant had produced the Will under which he claim exclusive right and asserted that he alone is entitled to succeed the estate of deceased 1st defendant. Learned counsel for the contesting respondents denied this contention and submitted that in fact the appellant filed the Will along with a petition after filing the written statement and on that day itself the contesting respondents filed objection disputing the genuineness of the Will. While that petition was pending, the application for recording the appellant as the sole legal representative of the deceased 1st defendant was allowed and that was the reason why the court below reviewed the order. Since the suit filed is one for partition, the question as to who is entitled to succeed the estate of the deceased 1st defendant is an issue to be considered in the suit itself. The appellant claims exclusive title over the property left by the deceased 1st defendant which is objected to by the plaintiffs and some other

defendants. Since that is a disputed question of fact the same is to be decided as an issue arising for consideration in the suit. Hence I am of the view that the order passed by the court below can be sustained. An issue also is to be framed as to whether the Will claimed by the appellant is a genuine one and the same shall be considered in the suit. So the CMA is only to be disposed of.

In the result, the CMA is disposed of. It is made clear that the court below shall frame an issue whether the Will claimed by the appellant is a genuine one or not and should consider the same at the time trial of the suit.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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C.M.A. NO. 189 OF 2002

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J U D G M E N T

13TH APRIL, 2007